



NBC 5 INVESTIGATES

NBC 5 Investigates how a simple 'twist of lemon' ended up as a federal case in a Chicago courtroom. And we found scores of other cases like it.

One New York lawyer has filed so many lawsuits here that he's caused some Chicago judges to say they've had enough. Is he a champion of consumer rights? Or clogging up the courts to make money?

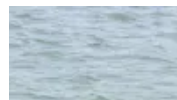
By **Bennett Haeberle**, **Katy Smyser** and **Lisa Capitanini** •
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If your “hint of lime” Tostitos didn’t have enough lime, would you make a federal case out of it? What if you found out your TGI Friday’s “Crunchy Fries” were actually baked? Or that your mint chocolate chip ice cream was mint-flavored? Would you head to court and sue?

Spencer Sheehan has – filing these and more than 800 other similar class-action cases in federal and state courts across the country, mostly over the past three years – including scores of lawsuits here in Illinois. The attorney from Long Island has been nicknamed “the Vanilla Vigilante” by a host of media outlets, because he’s repeatedly challenged the vanilla flavoring added to several brands of ice cream.

In fact it was just such a case that recently brought Sheehan and his clients some notoriety in October, when Breyer’s settled a case Sheehan filed, claiming the company’s “natural” vanilla ice cream should have mentioned on the label that it also contained artificial vanilla. Breyer’s did not admit any fault, but did agree to a settlement of \$8.85 million, plus more than \$200 thousand in fees.

“If somebody sells you something that is claiming it’s natural vanilla ice cream, then that’s what people should be getting,” Sheehan said. “And when it’s not, well then that’s a problem... It is selling something that actually you were able to show was priced higher than it would be.”

Accordingly, Sheehan said, his class-action plaintiffs will likely get refunded for however many cartons of ice cream they bought “in order to be made whole” while, according to court records, Sheehan and the other plaintiff attorneys received roughly \$3 million of the settlement for themselves (a 33% attorney fee is typical in these types of cases).



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gets, he files hundreds of other cases which – for the most part – go nowhere.

NBC 5 Investigates examined 150 of his cases in Illinois’ federal courts, filed over a three-year period. Sheehan, representing a different local plaintiff for each case, has challenged (for example) the amount of lemon in seltzer water; eggs described as “farm fresh;” “rich and creamy” candy that doesn’t have much dairy and a movie studio, which dropped the plaintiff’s favorite actress from the final cut of a film.

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In each case, Sheehan usually claims that his class-action plaintiffs have suffered damages of more than \$5 million.

“We would characterize [these cases] as largely abusive,” says Orianna Senatore, managing director and senior vice president of strategy for the U.S. Chamber Institute for Legal Reform.

“The types of cases that [Sheehan] files are really sort of a stereotypical business model,” she said, “which is to test a theory, see where it sticks, push it over and over again in sort of a copy-and-paste sort of manner, until it runs out of steam and then move on to something else.”

Spencer Sheehan disagrees.

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as frivolous, well – that's a common refrain that opponents of consumer empowerment have waved for decades," he said. "Thankfully we're not deterred from doing what we do well."

But NBC 5 Investigates found that when Sheehan files his cases here, Chicago's federal judges often quickly dismiss them – most frequently for failure to state any kind of legitimate claim. And in a few of those cases, those judges put their frustrations with Sheehan in writing.

Take a case that Sheehan filed in Chicago in 2022, challenging the amount of lemon in Polar Natural Seltzer. The federal district judge in that case, Judge Steven C. Seeger, dismissed the complaint and wrote an opinion about the local woman Sheehan had named as the plaintiff:

"[The plaintiff] apparently was none too pleased to discover that the 12-pack of carbonated water contained a 12-pack of carbonated water," Seeger wrote. "She apparently wanted the cans of water to contain a bunch of juice. Not just a little juice – a big squeeze of lemon juice, right in each can. She was so troubled with the cans that she marched to the federal courthouse. She believes that the packaging is misleading because it uses the word 'lemon.' The theory isn't that the can says 'lemon,' but there is no lemon. The cans apparently do, in fact, contain a little lemon. Instead, the theory is that [the plaintiff] thought that there would be more lemon. So she makes a big fuss about a little lemon."

"The complaint fizzes, and has not juice."

Judge Seeger dismissed several other local suits of Sheehan's, culminating in this opinion, after he threw out Sheehan's complaint that a brand of mayonnaise made with olive oil, actually had more soybean oil than olive oil:



fact, the theory of the case was past its prime from the very moment that it arrived in the federal courthouse. Plaintiff's counsel has peddled this theory time and again, in case after case, without much success in this district. The complaint joins a warehouse of complaints filed by Plaintiff's counsel that are not fit for public consumption."

"At this point, this Court has gone 'round and 'round the carousel a number of times with Plaintiff's counsel in cases about deceptive product labeling. ... In each case, the plaintiff unsuccessfully alleged that the product misled consumers because they expected it to contain more than a de minimis amount of an ingredient advertised on the label. The same attorney filed each case. The case at hand is yet another spin on an increasingly unpleasant ride. It is time for the carousel to come to a halt."

Another local federal judge, Iain D. Johnston, added this, when he dismissed a claim in which Sheehan and his plaintiff complained that Trident Original Flavor Sugar Free Gum featured a drawing of a mint leaf on its wrapper but didn't contain actual mint:

"[Plaintiff] pleads the proverbial kitchen sink. This type of blunderbuss pleading leaves the reader wondering if any of the claims have merit.

"Spaghetti is best eaten, not thrown at walls in a plane Jane fashion. Binakonsky."

Oriana Senatore said that Illinois' lack of caps on damages -- which she said allows people to sue even when they have suffered no harm -- makes this state an especially appealing place for Sheehan -- and other attorneys like him -- to file these types of claims. She also said Illinois allows a more lax standard for expert testimony.



or plaintiffs' lawyers have moved into Illinois and bring these cases – only these cases – because they're so easy to bring, and so lucrative, given the lack of caps," Senatore said.

Her organization – the U.S. Chamber's Institute for Legal Reform – has compiled data which, they said, show that the increasing number of tort claims – like those filed by Sheehan – is costing the public more and more each year, in courtroom time and litigation fees.

"I would say the only public cost is the cost that consumers are getting taken for, when they buy something that wasn't what it claimed to be," Sheehan said. "And what we're doing – not just me – is to try to equalize that cost."

Sheehan has, however, run into some recent difficulties.

In 2023, several judges in New York made public note of his "frivolous cases," and this past summer, a court in Florida sanctioned Sheehan for filing a suit "in bad faith" when he claimed that a bag of coffee advertised too many servings. Sheehan is appealing the sanction.

Sheehan admits that he doesn't keep close track of all his cases. So – is that an indication that they might be clogging up the system?

Sheehan's reply is simple: "What else is the court doing?"

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